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7 **Attorneys for SALOV NORTH AMERICA CORP., INC.**

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 ROHINI KUMAR, an individual, on behalf of)
herself, the general public and those similarly)
12 situated,)

13 Plaintiff,

14 vs.

15 SALOV NORTH AMERICA CORP.,)

16 Defendant.)

Case No. 4:14-cv-02411-YGR

) Assigned to: Hon. Yvonne Gonzalez Rogers

) **DECLARATION OF THOMAS MUELLER**
) **IN SUPPORT OF DEFENDANT SALOV**
) **NORTH AMERICA CORP., INC.'S**
) **OPPOSITION TO PLAINTIFF KUMAR'S**
) **MOTION FOR CLASS CERTIFICATION**

) Date: May 10, 2016

) Time: 2:00 p.m.

) Courtroom: 1

) **[Memorandum Of Points And Authorities;**
) **Declarations Of Sean A. Commons And**
) **Keith R. Ugone Filed Concurrently]**

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1 I, Thomas Mueller, declare as follows:

2 1. I am the president and chief executive officer of Defendant SALOV North America
3 Corp. ("SNA"), positions which I have held for almost 29 years. I respectfully submit this
4 declaration in support of SNA's Opposition to Plaintiff Kumar's Motion for Class Certification.

5 2. I have personal knowledge of the facts and circumstances stated herein and, if called
6 and sworn as a witness, I could and would testify competently thereto. SNA is a small, tightly-run
7 organization. It generally has had no more than 33 full-time employees, and it has been important
8 for me to be familiar with and stay current on all aspects of SNA's Filippo Berio olive oil business.
9 I have direct experience overseeing every aspect of SNA's business, including the Filippo Berio line
10 of olive oil products at issue in this case. In particular, due to the nature and extent of my
11 responsibilities, I have responsibility for SNA's sales and its sales staff whose day-to-day activities
12 are managed by SNA's Director of Sales, who reports to me and with whom I frequently discuss
13 sales and competitive issues. I am responsible for and approve all of SNA's pricing to retailers and
14 wholesalers, and monitor retail pricing of Filippo Berio and other olive oil products sold by SNA's
15 customers to consumers, including through discussions with and reports from SNA's sales team.
16 Staying current on pricing and promotions by SNA, retailers, and other distributors of olive oil are
17 important aspects of my responsibilities to ensure that Filippo Berio products are appropriately
18 positioned and competitively priced in the marketplace.

19 3. SNA is a founding member of the North American Olive Oil Association
20 ("NAOOA"), which was formed in 1989 by the leaders of several major olive oil importing
21 companies to adopt industry-wide standards for quality and authenticity consistent with the standards
22 adopted by the International Olive Oil Council (now the International Olive Council (the "IOC")) for
23 global olive oil commerce and to promote the consumption of olive oil nationally. The NAOOA is a
24 signatory to an IOC monitoring agreement along with trade associations of olive oil producers from
25 most of the olive oil producing countries in the Mediterranean basin. After participating in the
26 formation of the NAOOA, I served many years as Chairman of its Quality Control Committee, 12
27 years as an officer, 13 years as a member of the Executive Committee, and have been elected on
28 three separate occasions to serve two-year terms as NAOOA Chairman. Since the NAOOA's

1 formation, I have been actively involved in establishing olive oil standards in the United States, as
2 well as monitoring compliance with and enforcement of those standards.

3 **SNA's Tradition of Ensuring That Filippo Berio Remains of the Highest Quality**

4 4. SNA has been the exclusive distributor of Filippo Berio branded olive oil in the U.S.
5 throughout my time with SNA. The Filippo Berio brand is produced by SALOV S.p.A ("SALOV"),
6 a privately owned-Italian company, which traces its history back to 1867 in Italy and a gentleman
7 named Filippo Berio. Throughout my decades with SNA, I have regularly visited SALOV's
8 facilities in Massarossa, Italy, including the blending and bottling facilities. During my visits, and as
9 part of my work with SNA, I also have spoken with numerous SALOV personnel, including its
10 master blenders and chief chemist. Based on all of my observations and conversations, I know that
11 all of its employees place the utmost importance on producing the highest quality olive oils that
12 exceed any applicable standard in the European Union, the United States, and everywhere else in the
13 world that Filippo Berio is sold. My own personal philosophy as the head of SNA has likewise been
14 to ensure that our customers receive the highest quality products and service at a fair price.

15 5. The blending and bottling facilities in Massarossa, Italy are state-of-the-art and
16 include on-site equipment to perform advanced chemical testing. A comprehensive suite of
17 procedures and practices are followed to protect the authenticity and quality of Filippo Berio
18 products. During each olive oil "campaign" (i.e., growing season), the thousands of olive oil
19 samples received by SALOV for potential purchase undergo chemical and organoleptic (smell and
20 taste) tests to identify those that could be used to create the unique flavor profile of Filippo Berio
21 products. The personnel who perform these tests do not consider price at this stage – only whether
22 the samples meet rigorous quality standards and the desired flavor profile for the particular product
23 line.

24 6. Prior to accepting delivery of any olive oils that have been selected for use in Filippo
25 Berio branded products, a delivery undergoes tests using multiple samples before being accepted. If
26 the chemical or organoleptic qualities of a shipment do not match those of the original sample, the
27 delivery is rejected. If there is any indication or suspicion that a supplier has intentionally tried to
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1 substitute olive oil that is inferior to the original sample without disclosure or if any seed or nut oils
2 are detected in any of the samples, the supplier will never be used again.

3 7. Once a delivery of olive oil has been accepted, it is identified and stored in covered,
4 stainless steel tanks. Master blenders then oversee the process of creating the unique flavor profile
5 for each Filippo Berio product line. The blends always contain olive oils sourced from Italy. The
6 master blenders have decades of experience testing and tasting olive oils and are qualified to oversee
7 organoleptic testing of olive oils pursuant to testing protocols, and in compliance with standards set
8 by the IOC, whose olive oil standards are recognized world-wide for olive oil authenticity, quality,
9 and testing. The master blenders regularly participate in what is known as IOC ring testing to
10 confirm that their assessments of organoleptic standards is consistent with all applicable IOC
11 standards. They and SALOV's professionally-trained chemists stay apprised of the latest
12 scholarship and advances in olive oil testing, and participate in organizations devoted to promoting
13 olive oil quality and improving olive oil testing.

14 8. Blending olive oils to achieve a desired taste profile is an art as much as a science.
15 Olives are fruits and, like all fruits, have different tastes and characteristics based on innumerable
16 factors (olive variety, soil, rain fall, temperature, sun exposure, ripeness at time of harvest, etc.). It
17 would be impossible to achieve the desired taste profile for Filippo Berio products by using one
18 variety of olive or even one variety of olive from one supplier. Environmental conditions change
19 during each year and from year-to-year and impact the flavor of the oil extracted from the fruit. The
20 master blenders must carefully select and balance high quality oils from multiple suppliers to
21 maintain the unique Filippo Berio taste profile throughout each year and from campaign to
22 campaign. As a result, Filippo Berio olive oil products are truly unique as no olive oil exists with
23 the Filippo Berio flavor profile until multiple olive oils are blended under the guidance of the master
24 blenders.

25 9. Once the master blenders have determined the right balance of olive oils to achieve
26 the unique Filippo Berio flavor profile, the olive oils are blended, bottled, and then tested before
27 shipment. Although the oils already have undergone two rounds of tests by this point in the
28 production process, this testing is performed as a final safeguard. Check samples from each lot are

1 retained in the event any question is raised about the quality of any lot. Over the years, every time I
2 have asked for a check sample to be sent to an independent IOC certified laboratory for testing, the
3 independent testing has confirmed that the Filippo Berio product met or exceeded IOC standards.

4 **Filippo Berio Undergoes Regular Inspection by U.S. and Foreign Regulators**

5 10. Before leaving the production facilities in Massarosa, Italy for export by ship to the
6 U.S., Filippo Berio branded products are subject to random testing by Italian authorities for quality
7 and authenticity. Throughout my decades working for SNA, the Italian authorities have always
8 found that Filippo Berio branded products met or exceeded all applicable standards for quality and
9 authenticity.

10 11. Upon arrival in the U.S., but before being released to SNA, Filippo Berio branded
11 products are subject to inspection by U.S. Customs and the Federal Food and Drug Administration
12 (the “FDA”). U.S. Customs typically inspects several shipments a year at different ports of entry,
13 whereas the FDA inspects and tests samples less frequently. U.S. Customs inspections can include
14 product labeling. Throughout my decades of working for SNA, U.S. Customs has never rejected a
15 shipment of Filippo Berio on the ground that it was mislabeled. In particular, U.S. Customs has
16 never rejected a shipment of Filippo Berio on the ground that the phrase “Imported from Italy” can
17 only be used on products containing 100% Italian olive oil, and the labeling on each bottle of Filippo
18 Berio states “Packed in Italy with oils from Italy, Spain, Greece, and Tunisia.” Filippo Berio
19 products also have always passed all FDA testing.

20 **The Filippo Berio Product Lines And Labeling**

21 12. During the class period, SNA has sold six distinct lines, each with its own unique
22 flavor profile: Robusto Extra Virgin Olive Oil; Delicato Extra Virgin Olive Oil; Organic Extra
23 Virgin Olive Oil; Extra Virgin Olive Oil; Olive Oil; and Extra Light Tasting Olive Oil. The Robusto
24 Extra Virgin Olive Oil and Delicato Extra Virgin Olive Oil are the newest additions to the lines, first
25 introduced in 2013, in response to the ever-changing preferences of consumers.

26 13. SNA has conducted consumer preference surveys. None were limited to California
27 consumers. The surveys confirm what I’ve learned from my decades in the business: consumers
28 make purchasing decisions for numerous reasons. Many consumers “grab and go” (as marketers

1 say) because they know the variety, package size, or brand they want. Based on those surveys, and
2 based on my own experience in the industry, country of origin is not a motivator for the vast
3 majority of consumers. Very few consumers care about country of origin.

4 14. The shape, design, color, and content of each Filippo Berio product label at issue has
5 undergone several iterations during the proposed class period. For example, when cholesterol was a
6 subject of frequent public discussion, SNA added a flag to products to highlight that olive oil is a
7 “Heart Healthy” food (*see* paragraph 17 below for an example). One aspect of Filippo Berio that
8 SNA has not emphasized, however, is that it should only be used when preparing an “Italian” dish,
9 when preparing food for a special occasion, or an “Italian” meal. I and others at SNA have
10 concluded long ago that doing so would limit the brand’s appeal to many consumers. We want all
11 consumers to try and to enjoy our product every day. We have consciously emphasized the
12 versatility of Filippo Berio olive oil by sponsoring a broad range of “cooking show” chefs and by
13 providing recipes and usage suggestions that are intended to attract users of all ages and from as
14 many socio-economic categories and ethnicities as possible, especially people who have grown up in
15 cultures in which olive oil may not have played a significant role in their cuisine.

16 15. Prior to and throughout my tenure at SNA, Filippo Berio product labels have
17 truthfully stated that the product is “Imported from Italy.” The placement, size, and font size of the
18 phrase have undergone several iterations on the various products at different times during the
19 proposed class period, before being dropped across the entire product line. The phrase “Imported
20 from Italy” remained on the label largely because it had always been there and, even if not easy to
21 read, visually “balanced” the appearance of the label which has had phrases on the opposite side (*see*
22 paragraph 17 below for examples). The phrase “Imported from Italy” was not used because I or
23 anyone at SNA believed it had any impact on purchasing decisions. As should be evident from
24 looking at the change in labels over time, the phrase became smaller and smaller relative to other
25 statements on the labeling, until being dropped entirely in favor of “Imported.” In fact, no one at
26 SNA noticed for some time when a version of the Organic Extra Virgin Olive Oil label dropped all
27 references to the product being “Imported from Italy,” which resulted in products with that label
28

1 being sold side-by-side with products containing that phrase. The phrase “Imported from Italy” was
2 added back merely to maintain consistency across the Filippo Berio product lines.

3 16. A copy of Filippo Berio Organic Extra Virgin Olive Oil label without the phrase
4 “Imported From Italy,” which was applied to bottles for approximately eight months from early
5 2014 to late 2014, and would have remained on store shelves likely for up to a year from the time the
6 label was changed, is reproduced below:



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17. Below are reproductions of three front labels used during the class period on the most popular size package, the 16.9 ounce bottle, prior to removal of the words “from Italy”. The reproductions are of the Filippo Berio Extra Virgin Olive Oil product and are arranged beginning with the oldest label used during the class period on the left, progressing to the last label that still contained the phrase “Imported from Italy” on the furthest right. On each of these labels, black text was used against a dark green field without any “spot lighting,” which can be seen around the brand name on the two rightmost labels. Aside perhaps from the font size used within the graphic of the bee and depicting Filippo Berio, the phrase “Imported from Italy” always was printed in one of the smallest fonts used on the front label. The font size as printed on the 16.9 ounce bottle was originally 8 point, decreased to less than 8 point, and became less than 6 point (the smallest size font on the front label), before the words “from Italy” were dropped entirely.



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18. The back labels for the 16.9 ounce Filippo Berio Extra Virgin olive oil illustrate how the verbiage, font size, font thickness, relative size, and placement of the “Packed in Italy” statement changed over time. Below are three of the five back labels in use for this product and size during the class period, arranged oldest to newest from left to right. At the start of the class period, the statement originally was printed in a black font against a white/light green background, before SNA moved to printing in “knock out” white in a heavier weight font so that it could be more easily read against the dark green background.



19. A collection of the various Filippo Berio labels in use during the proposed class period, including those without the phrase “Imported from Italy,” are collectively attached as **Exhibit A**. Images showing the last iteration of the front labels applied to bottles prior to removal of the words “from Italy”, side by side for the entire line of Filippo Berio products, are collectively attached as **Exhibit B**.

1 20. Before the filing of this lawsuit, I decided to remove the phrase “Imported from Italy”
2 from the labeling for all of the product lines and replace it with the word “Imported” for several
3 reasons. Fundamentally, the phrase was not significant to purchasers of Filippo Berio olive oil.
4 Neither I nor others within SNA believed it helped distinguish our product from other olive oils on
5 store shelves. Italy has long been either the largest or second largest exporter of olive oils, so being
6 “Imported from Italy” does not effectively differentiate Filippo Berio olive oil from most products.
7 In addition, by this time, the phrase “Imported from Italy” was printed so small as to be illegible to
8 consumers walking by shelves, particularly on our products with darker background colors on the
9 labels. Someone would need to pick up the bottle and study the label to see the phrase, and
10 presumably a consumer who took the time to study the bottle would be equally interested in our back
11 label, which is the only place where we can share information about how delicious and versatile our
12 oils are, our tradition of quality, recipes, and other information intended to educate consumers. One
13 thing we have found to be an obstacle to purchasing decisions is that consumers do not know how to
14 use olive oil. As much as we have been trying to increase consumer awareness and brand
15 recognition, consumer education also has been a very important component of our labeling and
16 advertising.

17 21. I also decided to remove the phrase “Imported from Italy” prior to this lawsuit
18 because of a lawsuit filed against one of SNA’s smaller “mom and pop” retailers in the Superior
19 Court of D.C., which included a claim challenging the phrase “Imported from Italy.” I did not want
20 SNA or retailers of Filippo Berio to face the risk of any additional spurious lawsuits for a phrase that
21 served no discernible purpose.

22 22. I have read plaintiff’s motion for class certification, where they assert that the new
23 labels without the phrase “Imported from Italy” did not reach store shelves until September 2015.
24 That is not correct. I understood those deposition questions as asking me for the last possible date
25 when the products without that phrase reached store shelves. As I explained at my deposition, it is
26 impossible to give an exact date because the roll-out of the new labeling depended on the sales
27 velocity of a particular product line or size, as well as the particular retailer. Retailers sell through
28 some product lines or product sizes more rapidly than others. SNA also has many customers, some

1 of whom operate their own distribution centers, and a customer could have received a large shipment
2 shortly before the labeling change was implemented. After consulting with SNA's head of logistics,
3 and looking at SNA's business records, my best estimate is that products with the new labels would
4 have begun to appear on retail shelves in mid-2015, and no later than September 2015.

5 **Pricing And Labeling of Filippo Berio Compared to 100% Italian Olive Oils**

6 23. In all of my years pricing Filippo Berio olive oil, I have never priced Filippo Berio by
7 assigning values to statements on the label or by treating the product as a sum of its parts. Having
8 studied pricing of other olive oil products for years, I have never observed that others have either.
9 SNA's pricing has always been determined by the cost of olive oil from the Mediterranean basin
10 (which is determined by global supply and demand), product packaging and logistics, the
11 competitive landscape, the brand positioning of Filippo Berio, and SNA's administrative costs.
12 Ultimately, however, the highly competitive market for olive oil sold in the United States sets the
13 prices for Filippo Berio, and SNA must respond to the market.

14 24. Based on everything I know from decades of real-world experience pricing Filippo
15 Berio olive oils and monitoring the pricing of other olive oils, the market does not set or change
16 prices whenever words are added to or removed from labels of standard products of established
17 brands. The shape, design, color, and content of each Filippo Berio product label at issue have
18 undergone several iterations during the proposed class period, yet SNA has never even thought about
19 pricing, let alone tried to price, our products differently because of these label changes.
20 Furthermore, the methodology used to calculate sales pricing has never been altered because of label
21 changes. I have never heard of a retailer or wholesaler that attempted to negotiate with SNA over
22 pricing for Filippo Berio products because our label had changed.

23 25. Despite the numerous iterations of the label over the years, we have never observed
24 that either "every day" or promotional pricing of Filippo Berio olive oils by retailers changed
25 following the introduction of a new label. Whenever the labeling changes, there always are periods
26 of time when products with the old and new labels are in the marketplace at the same time, and they
27 are often side by side on store shelves. No retailer would charge different prices for the same
28 products because the labels were different. The most we can ever hope to accomplish with a label

1 change is to attract new customers to our brand. But because of the competitive landscape in which
2 SNA operates, and the fierce pricing pressures, we are not in a position to use a label change or a
3 growth in market share to raise prices. If we did so, retailers and wholesalers would simply buy
4 what they believe that their customers will consider to be substitutable products from someone else.
5 Likewise, current and prospective retail consumers of Filippo Berio would switch to other brands.

6 26. In addition, the theory that product pricing can be determined merely by taking the
7 sum of various attributes of olive oils, or that changes in olive oil labeling can reliably explain
8 changes in pricing, disregards the widespread practice in the olive oil industry of what is known as
9 line pricing for promotions. With line pricing, all regular products for a brand are priced exactly the
10 same for promotions of a given size, even if the products are different types with different flavors
11 (e.g., the regular Extra Virgin, Olive Oil, and Light Tasting Olive Oil for a brand will be priced for
12 promotions the same for any given size). During the class period, both SNA and retailers have
13 frequently used line pricing for promotions of Filippo Berio products, even though the labeling,
14 flavor profile, and cost to make each of the six products lines at issue is different. In SNA's
15 experience, line pricing has been especially prevalent in California during the class period.
16 Depending on the mix of products purchased and sold by a retailer using line pricing, this could
17 mean that some Filippo Berio products would be more competitively priced for their type than they
18 otherwise would be, and others will be less competitively priced than they otherwise would be. I
19 personally disagree with the philosophy behind line pricing because I feel it does not communicate
20 to consumers the differences in the costs of sourcing the different varieties of olive oils – Extra
21 Virgin, Olive Oil and Extra Light Tasting. But retailer line pricing shows that at least some retailers
22 and consumers do not assign a separate value to the different types of olive oil, even though the cost
23 to make them is different, and they clearly are labeled and positioned for different uses (e.g., Filippo
24 Berio recommends using Extra Virgin “For Dressing and Marinating,” and Olive Oil “For Sautéing
25 & Grilling”).

26 27. I understand that plaintiff believes that consumers placed a “premium” on Filippo
27 Berio when the label said “Imported from Italy,” and she believes that consumers interpreted the
28 phrase to mean that our products contained “100% Italian olive oil.” Based on my three decades in

1 the olive oil business, this defies the realities of the olive oil market and SNA's experience with
2 innumerable consumers. During the time when Filippo Berio labels included the phrase "Imported
3 from Italy," SNA never priced the products as if they contained 100% Italian olive oil or in any way
4 pegged regular or promotion pricing to that of 100% Italian olive oil products being offered by
5 retailers. SNA could not do so because Filippo Berio products are not positioned, labeled, or
6 marketed in the same manner as products that contain 100% Italian olive oil. In general, single
7 country of origin products emphasize that product characteristic and differentiator by using the
8 phrase "100% [name of country] olive oil," or they describe themselves as a "Product of [name of
9 country]". Single country of origin products often sell at higher prices than Filippo Berio branded
10 products. That is particularly true of 100% Italian Extra Virgin olive oils, which can cost several
11 multiples of what retailers often charge for Filippo Berio brand blended products. Single-sourcing
12 from Italy is far more expensive than sourcing and blending high quality olive oils from multiple
13 countries.

14 28. Based on everything I know about the olive oil market, neither SNA nor any other
15 brand or retailer could ever realize a premium due to consumers supposedly perceiving the phrase
16 "Imported from Italy" to mean that a product contains 100% Italian olive oils. SNA is not aware of
17 any product sold in California (or in the U.S.) that contains 100% Italian olive oil, but is described as
18 merely "Imported from Italy." If a product contains 100% Italian olive oil, then any
19 producer/marketer/retailer will emphasize that fact because it is a significant differentiator and
20 would immediately enable consumers to understand why the product is more expensive than it
21 otherwise would be.

22 29. For similar reasons, the only olive oils sold in the U.S. with 100% Italian olive oil
23 have been Extra Virgin olive oils. In all of my years in the business, SNA has never encountered or
24 even heard of a non-Extra Virgin olive oil (i.e., regular Olive Oil, Light Olive Oil, or Light Tasting
25 Olive Oil) that used 100% Italian olive oil, or was labeled, marketed, or advertised as containing
26 100% Italian olive oil. The market for non-Extra Virgin olive oils is especially price sensitive, and
27 non-Extra Virgin olive oils historically have been priced lower than Extra Virgin because Extra
28 Virgin olive oils are more expensive to source. In addition, consumers who purchase non-Extra

1 Virgin olive oils typically prefer less strong flavors than those found in Extra Virgin olive oils,
2 because non-Extra Virgin olive oils are typically used for every day cooking, frying, sautéing,
3 basting and baking. This type of usage eliminates any possible reason for creating a non-Extra
4 Virgin olive oil using 100% Italian olive oil or for thinking that consumers of those products would
5 want a product containing 100% Italian olive oil. On the other hand, consumers who desire 100%
6 Italian olive oil represent a small segment of the market, and typically are very particular about and
7 more focused on flavor, which means they would have no interest in non-Extra Virgin 100% Italian
8 olive oils. Simply put, there is no market demand or reason to create a non-Extra Virgin 100%
9 Italian olive oil product.

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30. It is helpful to see what bottles of 100% Italian olive oil look like and how they are priced to understand why the Filippo Berio brand is not positioned to compete in this segment and to see why a consumer looking at a shelf stocked with olive oils would not mistake a Filippo Berio product for a 100% Italian olive oil product. Below are photos taken of bottles of 100% Italian olive oils recently purchased at Southern California supermarket locations, including the actual retail prices. None use the phrase “Imported from Italy.”

Price: \$19.99



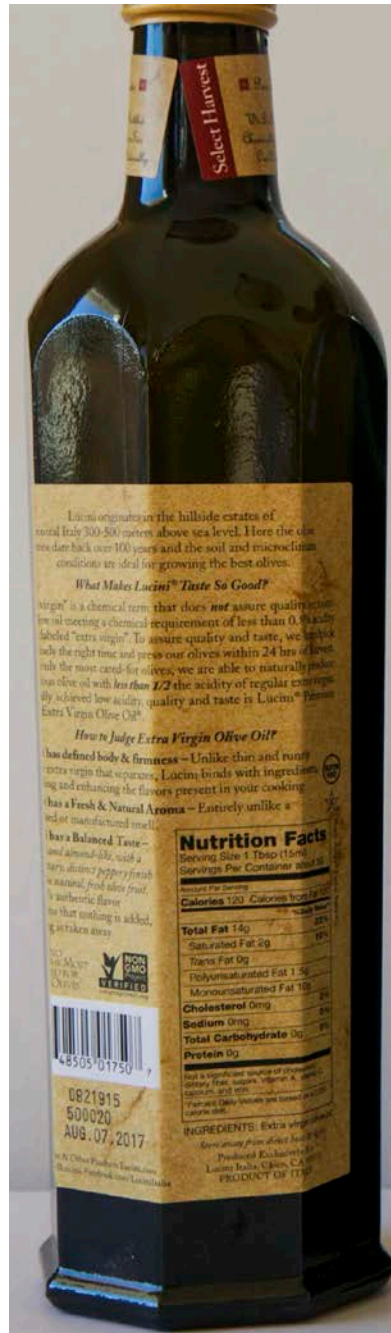
Price: \$28.99



Price: \$12.99



31. The front labels of these products contain statements such as “Italian Extra Virgin Olive Oil,” “Produced by smallholders from the Olivastra olives of Seggiano in Tuscany,” “100% ITALIAN OLIVES,” “PRODOTTO D’ITALIA,” “PRODUCE [SIC] IN ITALY FROM 100% ITALIAN OLIVES,” and “Harvested, Selected, pressed and estate bottled by OLEIFICIO MASELLA ITALY.” The back labels further emphasize that these products contain “ITALIAN EXTRA VIRGIN OLIVE OIL,” “SINGLE VARIETY NOT BLENDED,” or “OBTAINED DIRECTLY FROM ITALIAN OLIVES.” None use the phrase “Imported from Italy.”



32. The labeling and pricing of the above bottles is consistent with other 100% Italian olive oils sold in California (though, like all products sold at retail, I have seen some of the above-depicted products priced much higher). By way of example, I have seen a recent example of a 16.9 ounce bottle of 100% Italian olive oil selling for \$39.99 at a major supermarket chain in California (the Badia brand), and products in this space often sell in the \$12-19 range. In contrast, a 16.9 ounce bottle of Filippo Berio Extra Virgin Olive Oil purchased from the exact same Southern California supermarket location that sold the bottle of Lucini¹ for \$28.99 was priced at \$8.49, while a bottle of Filippo Berio Olive Oil was priced at \$8.29 at that supermarket.

33. If plaintiff's theory that consumers understood "Imported from Italy" to mean that a product contains 100% Italian olive oil had any validity, and assuming as plaintiff apparently does that consumers were unaware of the statement that Filippo Berio products are "Packed in Italy with oils from Italy, Spain, Greece, and Tunisia," then SNA should have experienced a substantial and immediate drop in the regular and promotion prices it could charge retailers and wholesalers, and the regular and promotion prices that retailers and wholesalers could charge their customers after the "Imported from Italy" phrase was replaced with "Imported." Neither has happened.

34. SNA's pricing to retailers and wholesalers has not changed since SNA replaced the phrase "Imported from Italy" with "Imported." While the switchover in labeling was occurring, SNA priced those products exactly the same as, and shipped them alongside, products with the old labels. SNA is not aware of any instance where a retailer or wholesaler asked to pay a different or lower price due to the label change, or where a retailer or wholesaler instituted different regular or promotional pricing because of the label change. If anything, the average retail price for Filippo Berio products has been trending (slightly) upward since the switchover in labeling, including in California.

Promotional Pricing of Filippo Berio

35. Several times a year during the class period, SNA ran promotional pricing programs, including in California, which substantially decreased the unit price charged to retailers and

¹ I understand that plaintiff's expert uses Lucini as one of the brands in his regression model.

1 wholesalers and, ultimately, consumers. In addition, during much of the class period, SNA regularly
2 offered coupon programs, including in California, typically for \$1.00 off a bottle. Depending on the
3 price charged by a retailer, a coupon could provide customers with up to a 20% discount (e.g., if a
4 retailer charged \$5 for a bottle). SNA promotions and coupons could be in addition to other benefits
5 offered directly by retailers (such as club card rebates and points).

6 36. Typically more than once a year between 2010 and 2013, SNA would run promotions
7 using what are known as “neck collars.” Neck collars completely obscure the top portion of the
8 label, including the graphic logo and, when it appeared on the label, the phrase “Imported from
9 Italy.” Below is an example of the graphical layout of the front and back of one such neck collar.
10 A true and correct copy of this and other hang tags are attached collectively as **Exhibit C**.



1 37. SNA does not set the prices charged to consumers. SNA’s goal is for each product
2 line of Filippo Berio olive oil to be among the most affordable high quality olive oils on a store
3 shelf, and depending on the store, it can be the most affordable. For instance, a 16.9 ounce Filippo
4 Berio olive oil may often retail for somewhere between approximately \$5.99 and \$7.99, though just
5 like any retail product, the price of that same bottle can vary widely in either direction depending on
6 the particular retailer and the demand in that particular region. The exact same bottle that sells for
7 \$4.99 at one retailer can sell for \$10.99 at another retailer. The amount one type of Filippo Berio
8 olive oil sells for versus another also can differ widely from retailer to retailer, including depending
9 on whether a retailer uses line pricing (which I discuss above in greater detail at paragraph 26).

10 38. California historically has been one of the smallest markets for Filippo Berio olive
11 oil. During the class period, Filippo Berio’s market share generally has ranged from 0.5% to 2% of
12 the olive oil market, depending on the city or region within California. Over the class period, SNA
13 has experienced [REDACTED] of Filippo Berio olive oil products in California on [REDACTED]
14 [REDACTED]

15 **SNA Stands Behind The Filippo Berio Brand**

16 39. SNA always has stood behind the quality of Filippo Berio olive oils and every other
17 Filippo Berio product it sells. Should a consumer be dissatisfied for any reason, SNA offers a full
18 refund or exchange. Other than plaintiff Kumar in this case, and the plaintiff in the case in D.C.
19 litigated by one of the same law firms that represents Ms. Kumar in this case, in nearly three
20 decades, among all consumers nationwide, SNA has received only one inquiry from a consumer who
21 claimed to have been confused by the phrase “Imported from Italy”. Consistent with SNA’s policy,
22 the individual was offered a refund or replacement.

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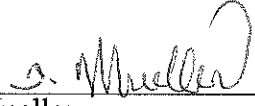
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Other Observation

40. Although SNA has used IRI and Nielsen data reporting services to track market activity, those services have limitations. For instance, I understand that plaintiff's expert believes based on IRI data that SNA sold 34 ounce (one liter) bottles of Filippo Berio Olive Oil in California during the class period. SNA, however, is not aware of any such sales in California and has sold that size bottle only to a club retailer that does not participate in IRI.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the 15th day of March, 2016, in Lyndhurst, New Jersey.



Thomas Mueller